

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Universal Service Reform – Mobility Fund |) | WT Docket No. 10-208 |

**UNION TELEPHONE COMPANY
PETITION FOR LIMITED WAIVER AND REQUEST
FOR EXTENSION OF COMPLIANCE DEADLINES FOR
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

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SUMMARY

Union Telephone Company (“Union”), using Mobility Fund Phase I support combined with its own capital investments, has completed deployment of 4G broadband networks to serve customers in many small communities in certain rural counties in Wyoming.

Nonetheless, Union requests a brief three-month extension of the July 30, 2016, deadline for its two 4G Census Tracts. Union has been successful in completing cellular tower construction at all tower sites in these Census Tracts. A brief extension is necessary, however, to enable Union to complete drive testing, and to prepare and submit drive test reports to the Commission, for each of the Tracts. The primary factor was the unusually long timeframe in executing tower leases that contributing to the unexpected delay affecting these Census Tracts.

Union demonstrates good cause for granting the Petition, showing that it has faced encumbrances beyond its control and has diligently worked to overcome these delays and complete construction in a timely fashion.

Granting the Petition will serve the public interest by helping to ensure the availability of robust, affordable voice and broadband services to consumers in rural areas in rural Wyoming. Moreover, in light of Union’s efforts to overcome delays and its success in completing tower construction at all sites in the Census Tracts for which a 90-day extension is sought, equity and the effective implementation of the Commission’s Mobility Fund and other universal service policies both will be served by the waiver of penalties otherwise mandated by the Commission’s rules.

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Union Telephone Company (“Union”), by counsel and pursuant to Section 1.3 of the Commission’s Rules,¹ hereby submits this petition (hereinafter, the “Petition”) to seek a limited waiver of Mobility Fund Phase I (“Phase I”) public interest obligations, and to request an extension of the requirement that carriers must submit drive test data within three years after receiving Phase I support (hereinafter, “drive test data reporting deadline”)² with respect to two (2) 4G Census Tracts for which Union was a winning bidder in Auction No. 901 for Phase I support.³

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.1006(c).

³ *Mobility Fund Phase I Support Authorized for 40 Winning Bids*, Public Notice, 28 FCC Rcd 11040 (WTB, WCB 2013) (“*Authorization Public Notice*”) (authorizing support for Union in 6 Census Tracts); *see Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, FCC Public Notice, 27 FCC Rcd 12031, 12045-46 (Attach. A) (2012). Union also was the winning bidder for four (4) 3G Census Tracts for which it has already completed construction.

I. INTRODUCTION.

Union is a family owned and operated telecommunications provider founded in 1914. It currently serves Wyoming, Northwestern Colorado, and parts of Utah and Montana with a vast regional wireless voice and high-speed data network connected to a national network of roaming partners. Union has more towers throughout Wyoming than any other wireless provider and continues to add to its network monthly. In the western states served by Union's network, wireless service in rural areas is critical for safety and security since many people travel and work in these rural areas each day.

Union provides mobile service in urban areas in the states in which it operates, and also in rural areas that other wireless carriers typically do not cover. Through the years Union has supplemented its cellular spectrum holdings with broadband PCS spectrum and 700 MHz spectrum in order to meet increasing demand for wireless voice and broadband data services in the rural communities it serves.

For the reasons explained in detail in the Petition, Union petitions the Commission to waive the requirements of subsections (b) and (c) of Section 54.1006 of its rules, and to extend the applicable drive test data reporting deadline for: (1) Census Tract T56007968000 to October 31, 2016, which is three months from the current July 30, 2016, drive test data reporting deadline; and (2) for Census Tract T56013940100-4610 to October 31, 2016, which is also three months from the current July 30, 2016, drive test data reporting deadline.

Union also requests a waiver of Section 54.1006(f) of the Commission's Rules⁴ pursuant to which Union (1) will not be obligated to (a) repay to the Commission any Phase I support that the Commission has already disbursed to Union in connection with the Census Tracts for which

waiver is sought in the Petition; or (b) make any performance default payments prior to the extended deadlines requested in the Petition; and (2) will not be disqualified from receiving Mobility Fund support or other Universal Service Fund support.

Census Tract T56007968000, located in Carbon County, Wyoming (Study Area Code 518001) (“Carbon County Census Tract”), contains 2,559.68 unserved road miles. Census Tract T56013940100-4610, located in Fremont County, Wyoming (Study Area Code 518005) (“Fremont County Census Tract”), contains 1,180.58 unserved road miles.

The two (2) Census Tracts cover extremely remote and rural areas in Wyoming. Union is required to deploy networks in these Census Tracts that deliver 4G service not later than July 30, 2016 (three years after the authorization of Phase I support for Union). Before the July 30, 2016, deadline, Union is required to submit drive test data showing mobile transmissions (supporting both voice and data) covering at least 75 percent of previously unserved areas.⁵

Union has been working diligently and effectively to deploy 4G service that already meets the Section 54.1006 network coverage requirement, in advance of the July 30, 2016, deadline. To date, it has exceeded the seventy-five (75) percent unserved road mile coverage requirement in both the Carbon County Census Tract and the Fremont County Census Tract.

As discussed in Section II, below, however, Union had encountered unexpected delays affecting the completion of construction and related tasks for certain cell sites, for reasons beyond its control, and these delays have made it necessary for Union to request an additional three

⁴ 47 C.F.R. § 54.1006(f).

⁵ 47 C.F.R. § 54.1006(b). The Commission’s rule specifies that mobile transmissions must meet or exceed outdoor minimum data transmission rates of 50 kbps uplink and 200 kbps downlink at vehicle speeds appropriate for the roads covered, and must have a “[t]ransmission latency low enough to enable the use of real time applications, such as VoIP [voice-over-Internet protocol].” *Id.*

months beyond the July 30, 2016, deadline to complete the required drive tests and submit the drive test data to the Commission to certify completion of construction and satisfaction of the Phase I network coverage requirement.

II. CIRCUMSTANCES BEYOND UNION’S CONTROL HAVE CAUSED UNEXPECTED DELAYS IN CONSTRUCTION THAT JUSTIFY A WAIVER OF THE DRIVE TEST DATA REPORTING DEADLINE.

In order to make a successful showing in support of its request for a waiver and an extension of the drive test data reporting deadline, Union must “plead with particularity the facts and circumstances” that warrant a grant of the requested waiver and extension of the drive test data reporting deadline.⁶ These required showings for the two Census Tracts are presented below. In addition, attached as Exhibit A, Union provides a Declaration Under Penalty of Perjury of Chris Reno, Union’s attesting to the truth and correctness of the facts stated in the Petition.

Although Union has encountered some unexpected delays, which it could not have foreseen and which have hindered efforts to meet construction schedules, Union has overcome these delays and has completed all planned cellular tower site construction, and related engineering tasks, in each of the two Census Tracts. A three-month extension of the drive test data reporting deadline is necessary, however, to enable Union to complete collection and report drive test data to the Commission, as required by subsections (b) and (c) of Section 54.1006.

Utilizing Phase I support combined with its own capital investments, Union has generally been successful and on schedule in proceeding with construction in each of the two Census Tracts involved, but, as described in the following sections, some unanticipated impediments

⁶ *Rio Grande Radio Family Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968). See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, n.9 (D.C. Cir. 1969) (“*WAIT Radio*”), *cert. denied*, 409 U.S. 1027 (1972).

forced construction delays beyond Union's control that, in turn, will prevent Union from completing drive testing and reporting before the July 30, 2016, deadline.

As a general matter, Union has scheduled the construction of cellular tower sites located in the two Census Tracts, as well as other tower sites Union is constructing with Phase I support, on a phased basis. As a result, tower sites in which building commenced earlier in Union's construction schedule have been completed earlier than cellular sites in which building commenced later in the schedule. This phased scheduling has affected the timetable for construction of sites in the Carbon County and Fremont County Census Tracts.

Nonetheless, work on cellular tower sites in the two Census Tracts discussed below, was commenced by Union in sufficient time for on-time completion, allowing for reasonable margins for unexpected delays.

Carbon Census Tract.—Overlay of UMTS and LTE equipment on seven existing sites and constructing two new cellular tower sites for the Carbon Census Tract, located in south central Wyoming, which includes the communities of Saratoga, Encampment and Ryan Park as well as the Medicine Bow Routt National Forest. While construction has been completed, there have been unexpected delays that justify extension of the drive test data reporting deadline.

Overlay of the six existing sites and the addition of one new site occurred in 2014. The initial plan was to have the four new cellular tower sites located primarily within the Medicine Bow Routt National Forest (hereinafter, the "National Forest"); though with the least impact to the National Forest possible. The new cellular tower sites were identified in December, 2013. At that time, Union recognized that the proposed timelines relating to the acquisition of the cellular tower sites was a concern given the amount of wilderness and rolling terrain and the large population of various deciduous and coniferous trees.

In May, 2014, Union was informed by the Forest Service that it would not approve any telecommunications tower site within the National Forest unless all private and state options had been exhausted, but would assist Union to allow them access to any available private or state land to install cellular towers. Over the next year, Union approached three private landowners with property that could be suitable for siting a telecommunication tower. Reasonable business terms could not be reached with two of the private landowners, and the third location was determined to be unbuildable due to the rugged nature of the terrain. Union also approached the Forest Service about collocating on an existing fire watchpoint – Blackhall Fire Lookout, but was never able to get enough feedback from the Forest Service to present a reasonable proposal. At that point, Union began to look at alternate ways to meet the specified coverage requirements. After revisiting the design of the area, Union settled on a solution that involved adding one new site on State of Wyoming land and overlaying two additional existing sites on the edges of the targeted coverage area. The two overlays were brought on air in August 2015 and March 2016.

The site on State of Wyoming land, however, called McClain Creek, which was targeted during the third quarter of 2015, required Union to enter into a land lease with the State of Wyoming. In July, 2015, Union initiated the process of obtaining the required lease and permits to the McClain Creek site from the State of Wyoming Lands Department. In addition, Union had to negotiate private access agreements with people who had grazing rights on to the McClain Creek site. This was initially anticipated to be a 90-120 day process.

Response from the grazing lessee took much longer than anticipated and stalled the state processing of the application. The State Land Commissioners approved the special use lease on December 11, 2015 with a condition of a survey prior to issuance of the lease. Due to snowpack and lack of accessibility to the location the survey was finalized and submitted to the Office of

State Lands in April 2016. Union received the first issuance of SU-869 on June 3, 2016 and returned it executed June 6, 2016. The final fully executed lease was returned by the state on June 23, 2016.

Once the McClain Creek land lease was finalized, Union immediately began construction by first deploying a solar/wind powered portable mobile cellular site (a “cell on wheels” or “COW”), followed by the installation of equipment on the COW and installation of microwave facilities adjacent to the McClain Creek site. Following radio frequency testing, Union turned up the McClain Creek site on July 12, 2016. Prior to completion of the McClain Creek site, Union had been providing service to approximately 65-70 percent of the eligible roads within the Carbon Census Tract; hence it was necessary to deploy the McClain Creek site in order to achieve at least 75 percent coverage of the eligible road miles within the Tract.

At this time, Union has substantially completed the drive testing for the eligible road miles within the Carbon Census Tract for which Union is providing 4G service. Union expects that it will take three to four weeks to complete its drive testing, which is dependent on its ability to access the roads. Specifically, the lack of quality roads in the National Forest could likely delay Union’s drive test data collection. Union has been told that its post-processing vendor will take four to six week for initial post processing. Further, Union expects an additional two weeks to re-drive areas after review of initial post processing results and another two weeks to process the new data and format it for submission to the Universal Service Administrative Company (“USAC”).

B. Fremont County Census Tract.

Overlay of UMTS and LTE equipment on two cellular tower sites and construction two new sites has been completed by Union for the Fremont Census Tract, located northwest of the

Carbon Census Tract, and consisting of the Wind River Indian Reservation. While Union has worked diligently to keep on schedule, unexpected problems have forced some delays that have prompted Union's request for an extension of the deadline.

The Commission is abundantly aware of the various issues carriers often must resolve when seeking to construct cellular towers on tribal lands. In this instance, there were additional challenges because Union had to negotiate with two tribes in order to secure site locations, given the joint management of the Wind River Indian Reservation by the Northern Arapaho and Eastern Shoshone tribes.

Union initially approached the Northern Arapaho Business Council on October 30, 2012 and the Eastern Shoshone Business Council on January 15, 2013 to discuss Mobility Fund Phase I opportunities. After those meetings, Union worked to obtain all private leases and easements as well as all cultural approvals necessary to build out these underserved areas. During this time, Union came to an informal agreement with the Wyoming Department of Transportation ("WYDOT") regarding a tower site referred to as the Winkleman Dome ("hereinafter, Winkleman"). This agreement was subject to approval by the Northern Arapaho and Eastern Shoshone tribes as stipulated in the WYDOT lease with the tribes. On September 21, 2015, Union had meetings with both tribes to discuss the three tower sites located on the Wind River Indian Reservation as well as any tribal requirements on drive testing. Working with the tribal business councils as necessary, Union met with each business council on October 26, 2015, and again between the period of January 3, 2016 through January 5, 2016. In early February, 2016, Union engaged in workshops with both tribes and also was able to obtain general approval on the Mobility Fund proposals that included Winkleman, Ethete and the drive testing at that time.

On February 3, 2016, Union entered into a license agreement with the Eastern Shoshone

for the Winkleman site, and on February 25, 2016, Union entered into a license agreement with the Northern Arapaho tribe. The following month, on March 16, 2016, both tribes issued a business license to Union. In April, 2016, Union provided WYDOT with the lease agreement for review; however, WYDOT indicated that the state would draft the lease agreement for Winkleman. Later that month, Union received the Winkleman lease and immediately executed it. Nonetheless, WYDOT indicate that it would need to be reviewed by the Attorney General's Office before it could be executed.

WYDOT did not respond to Union until May 11, 2016 and at that time, indicated that the Winkleman lease was subject to further revisions by WYDOT. On June 3, 2016, Union executed the revised Winkleman lease. Several weeks later, on July 1, 2016, the Winkleman lease was fully executed by all parties, and Union commenced construction on or around July 6, 2016.

At this time, Union has substantially completed of the drive testing for the eligible road miles within the Fremont Census Tract for which Union is providing 4G service. Union expects that it will take three to four weeks to complete its drive testing, which is dependent on its ability to access the roads. Specifically, the lack of quality roads in the Wind River Indian Reservation could likely delay Union's drive test data collection. Union has been told that its post-processing vendor will take four to six week for initial post processing. Further, Union expects an additional two weeks to re-drive areas after review of initial post processing results and another two weeks to process the new data and format it for submission to USAC.

III. GRANT OF UNION’S PETITION AND REQUEST FOR AN EXTENSION OF THE DRIVE TEST DATA REPORTING DEADLINE IS SUPPORTED BY A SHOWING OF GOOD CAUSE AND WOULD SERVE THE PUBLIC INTEREST.

The Commission may waive its rules based upon a showing of good cause,⁷ and it may exercise its discretion to waive a rule where the facts of a particular case support a conclusion that strict enforcement of the rule would not be in the public interest.⁸ The Commission may also take into consideration, on a case-by-case basis, factors involving equity, hardship, and more effective implementation of overall Commission policy.⁹ “Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”¹⁰

Moreover, the Commission has the authority to carry out its responsibilities by promulgating rules of general application that establish the “public interest” for a broad range of cases. In adopting these general rules, however, the Commission is not relieved of its obligation to seek to advance the “public interest” in particular, individualized cases. Thus, the Commission’s authority to waive its rules is akin to an obligation, in that this waiver authority is a *sine qua non* to its ability to adopt rules that otherwise are inflexible. This waiver authority is a necessary “safe-

⁷ 47 C.F.R. § 1.3.

⁸ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”) (citing *WAIT Radio*, 418 F.2d at 1159).

⁹ See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Communications Company, L.P. Petition for Waiver*, CC Docket No. 94-129, Order, DA 00-620 (rel. Mar. 17, 2000), at para. 4 (citing *WAIT Radio*, 418 F.2d at 1157).

¹⁰ *Micronesian Telecommunications Corporation and PTI Pacifica, Inc., Request for Waiver of Section 54.418 of the Commission’s Rules*, CC Docket No. 96-45, *DTV Consumer Education Initiative*, MB Docket No. 07-148, Order, DA 08-1029 (WCB rel. Apr. 30, 2008), at para. 6 n.20 (citing *Northeast Cellular*, 897 F.2d at 1166).

ty valve” that makes the system work.¹¹

In the special circumstances affecting the two Census Tracts, as discussed above, Union has faced hindrances beyond its control, it has diligently worked to complete construction in a timely fashion, and it has been successful in doing so. Though cellular tower site construction is complete, an additional brief period of time is needed for the collection and submission of drive test data. Union has shown good cause for this extension of the July 30, 2016, deadline. In light of the progress Union has already made, and the special circumstances it has shown, a grant of the brief extension is warranted and will provide for a more effective implementation of the Commission’s Mobility Fund and other universal service policies than strict adherence to the drive test data reporting deadline.

Finally, denying Union’s request for a brief extension of the drive test data reporting deadline would not serve the public interest because imposing a monetary penalty or other penalties pursuant to Section 54.1006(f) would be inequitable, and would not be an appropriate means of implementing the Commission’s overall policies, particularly in light of the successful efforts Union has made to complete construction of cell sites in the two Census Tracts, and the various delays Union has overcome, to deploy a 4G network throughout the two Tracts.

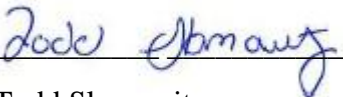
¹¹ See *WAIT Radio*, 418 F.2d at 1157, 1159 (noting that “[t]he limited safety valve [provided by the waiver process] permits a more rigorous adherence to an effective regulation”).

IV. CONCLUSION.

The Union Telephone Company, based upon its demonstration that there is good cause for a grant of its requested waivers of the Commission's rules, and for the extension of the July 30, 2016, drive test data reporting deadline, and that a grant of the Petition will be in the public interest, respectfully requests that the Petition be granted.

Respectfully submitted,

UNION TELEPHONE COMPANY

By: 

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July 29, 2016

EXHIBIT A

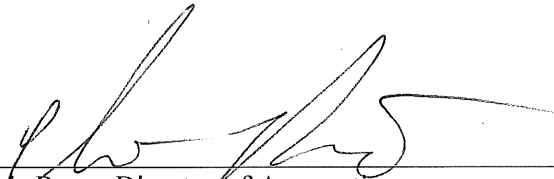
DECLARATION UNDER PENALTY OF PERJURY

DECLARATION UNDER PENALTY OF PERJURY

I, Chris Reno, hereby declare under penalty of perjury as follows:

1. I am the Director of Accounting for Union Telephone Company ("Union").
2. This Declaration is submitted in support of the Petition for Limited Waiver and Request for Extension of Compliance Deadlines for Mobility Fund Phase I Public Interest Obligations ("Petition"), to be filed with the Commission by Union on July 29, 2016.
3. I declare under penalty of perjury, pursuant to Sections 502 and 503(b) of the Communications Act of 1934 and Section 1001 of Title 18, United States Code, that the facts and information contained in the foregoing Petition are true and correct to the best of my knowledge.

Executed on July 28, 2016.



Chris Reno, Director of Accounting
Union Telephone Company